STATE OF MICHIGAN

COURT OF APPEALS

GREAT LAKES MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

KENNETH KIRSCHNER, PAMELA KIRSCHNER and KEN'S LITTLE BEAR, LLC,

Defendants/Third-Party Plaintiffs/Appellees,

and

DANIEL VEESER INSURANCE AGENCY, INC. and DANIEL VEESER,

Third-Party Defendants-Appellees.

UNPUBLISHED
August 4, 2011

No. 295677
Menominee Circuit Court
LC No. 09-012869-CZ

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in defendants' favor. We reverse and remand to the trial court.

Plaintiff initiated this property insurance case, asking the trial court to render a declaratory judgment in its favor to rescind a policy of insurance plaintiff had issued to defendants, and to preclude any claims submitted as a result of the fire that badly damaged the subject property on February 1, 2009. Plaintiff alleged that defendants made misrepresentations in the insurance application, and that the policy was void on the basis of the transfer of title for the insured premises from defendants' name into that of Ken's Little Bear, L.L.C. On defendants' motion, third-party defendants (defendant's insurance agents) were added as parties due to their alleged wrongful actions in securing the policy at issue. Defendants moved for summary disposition, and the trial court granted summary disposition in their favor, ordering that plaintiff pay defendants according to the terms of the policy, together with taxable costs and statutory attorney fees, and dismissing the third-party complaint without prejudice.

Plaintiff first argues on appeal that the trial court erred in its conclusion that defendants had an insurable interest in the real property and were thus entitled to recovery under the policy. We agree.

We review a trial court's decision to grant a motion for summary disposition de novo. See *Michigan Federation of Teachers & Sch Related Personnel, AFT, AFL-CIO v Univ of Michigan*, 481 Mich 657, 664; 753 NW2d 28 (2008). Issues of contract interpretation are questions of law that this Court likewise reviews de novo. See *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006).

An insurance policy is much the same as any other contract in that it is an agreement between its parties. *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 444; 761 NW2d 846 (2008). "The primary goal in the interpretation of an insurance policy is to honor the intent of the parties." *Id*., citing *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

An insurance contract must be construed to give effect to every word, clause, and phrase, and a construction should be avoided that would render any part of the contract surplusage or nugatory. *Klapp*, 468 Mich at 468. When reviewing an insurance policy dispute, this Court must look to the language of the policy and interpret the terms in accordance with established principles of contract construction. *McNeel v Farm Bureau Gen Ins Co of Michigan*, ___ Mich App ___; ___ NW2d ___ (Docket No. 285008 issued June 29, 2010), slip op p 6, citing *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353-354; 596 NW2d 190 (1999). Contractual terms must be interpreted to avoid absurd or unreasonable conditions or results. *Hastings Mut Ins v Safety King Inc*, 286 Mich App 287, 297; 778 NW2d 275 (2009). The terms of an insurance policy are given their commonly used meanings, unless clearly defined in the policy. *Group Ins Co v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). A court may establish the meaning of a term through a dictionary definition. *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 84; 730 NW2d 682 (2007).

The policy at issue included the following definitions:

> 1. The definitions "you" and "your" mean the person or persons named as the insured on the "declarations." This includes "your" spouse if a resident of "your" household.
>
> 2. The words "we", "us", and "our" mean the company providing this insurance.
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> * * *
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> 7. "Insured" means:
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> a. "You";
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> b. "Your" relatives if residents of "your" household;

c. Persons under the age of 21 residing in "your" household and in "your" care or in the care of "your" resident relatives; and

d. "Your" legal representative if "you" die while insured by this policy. This person is an "insured" only for liability arising out of the "insured premises". An "insured" at the time of "your" death remains an "insured" while residing on the "insured premises".

8. "Insured premises"

a. Described Location: If "you" own and reside in the "residence" shown on the "declarations" as the described location, the "insured premises" means:

1) that "residence"; and

2) related private structures and grounds at that location.

If the "residence" is a townhouse or a row house, item 2) above includes only related private structures and grounds at that location used or occupied solely by "your" household for residential purposes.

Thus, the policy provided a definition of "insured" and "insured premises." "Insured" includes the named insured, residents of the named insured's household, or the named insured's legal representative. Further, the policy defined "insured premises" as the residence shown on the declarations page that the insured party owns and where the insured party resides. In this situation, the parties acknowledge that defendants were listed as the named insured individuals, but that defendants did not "own" the premises. Title to the property was undisputedly quitclaimed to Ken's Little Bear, Inc, LLC in February 2008 and the LLC (of which defendant Kenneth Kirschner was the sole member) was not a named insured. Because the policy definition of "insured premises" under ¶ 8a, as shown above, applies where the insured party owns the premises and defendants admittedly did not, the premises could not qualify as "insured premises" under the policy language. [1]

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[1]The supplemental brief argues that ¶ 8a is an "exclusion from coverage," which does not apply because defendants did not reside at the property. Not only does the case cited in the supplemental authority, *McGrath v Allstate Ins Co*, ___ Mich App ___; ___ NW2d ___ (Docket No. 289210, issued November 2, 2010), not support defendants' position, their argument is backward. The insured premises is defined as the residence shown on the declarations page that the insured party both owns *and* where the insured party resides, and defendants concede that they did not "reside" at the premises. Though plaintiff implicitly found that the residency requirement had been met, coverage could arguably have been precluded on the basis of their non-residency, given the policy language.

"[U]nambiguous contracts are not open to judicial construction and must be *enforced as written.*" *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005) (emphasis in the original). "Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract." *Id*. Thus, under the unambiguous terms of the policy, defendants are precluded from collecting insurance benefits because they, as the collective "insured party," did not own the cabin.

Additionally, the policy contains a provision which provides, "This policy may not be assigned without our written consent." Because title to the property was transferred, and defendants did not obtain, or attempt to obtain plaintiff's written consent to assign the policy to the new owner of the property, defendants are precluded from seeking coverage for any claim submitted as a result of the fire.

The law is well settled that an insured is held to have knowledge of the terms and conditions contained in his policy of insurance, even though that insured may not have read it. *Marlo Beauty Supply Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 324; 575 NW2d 324 (1998). Because the trial court erred in interpreting the policy language to provide coverage under these facts, we reverse and remand this case to the trial court for proceedings consistent with this opinion. Since plaintiff is entitled to rescind the policy, a refund of the paid premiums is in order. *Burton v Wolverine Mutual Ins Co*, 213 Mich App 514; 540 NW2d 480 (1995). In light of this conclusion, we need not consider the remaining issues raised on appeal.

Reversed and remanded to the trial court. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher